

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 11/2/2018 7:10:08 PM
To: Kupchan, Simma [Kupchan.Simma@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]
Subject: RE: Follow-ups on two Florida documents

Good with me

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Kupchan, Simma
Sent: Friday, November 2, 2018 3:05 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Re: Follow-ups on two Florida documents

Perfect. I was going to counter-propose that structure to you but thought my emails were long enough already. Barring objections to the contrary, I will pass along this language to the Region and they will follow up with FDEP on all of their proposed language.

Thanks!

Simma

On Nov 2, 2018, at 1:18 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

Got it. What about:

Ex. 5 AC/DP

David Fotouhi

Principal Deputy General Counsel
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Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Kupchan, Simma
Sent: Friday, November 2, 2018 10:57 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Follow-ups on two Florida documents

David,

Ex. 5 AC/DP

Thanks again for your attention,

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Fotouhi, David
Sent: Thursday, November 1, 2018 5:16 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Follow-ups on two Florida documents

Ex. 5 AC/DP

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
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fotouhi.david@epa.gov

From: Kupchan, Simma
Sent: Thursday, November 1, 2018 4:02 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Follow-ups on two Florida documents

David,

Thank you very much for your input on the proposed changes to FL's rules. R4 will incorporate all of your proposed edits, but just wanted to propose one alternative edit to the "material permit modification" paragraph, in response to a question you raised. Please see below.

Stakeholder-proposed language:

21. "Material permit modification" and "material changes in the scope of project" mean, for the purpose of applying Section 373.4146(5), F.S., only those modifications or changes that result in a significant increase in the total project environmental impact, including wildlife impacts, or significant increase in the total project wetland impact.

Original proposed passback:

Ex. 5 AC/DP

David asked:

Ex. 5 AC/DP

New proposed language:

Ex. 5 AC/DP

Ex. 5 AC/DP

Could you please let us know if you are comfortable with **Ex. 5 AC/DP** or if you have concerns about it? Thank you very much for your continued attention to this matter.

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Fotouhi, David
Sent: Tuesday, October 30, 2018 7:30 PM
To: Palmer, Leif <Palmer.Leif@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Glenn, Trey <Glenn.Trey@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

My comments and suggestions are tracked in the attached document. Please let me know if you would like to discuss.

Best,

David

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Palmer, Leif
Sent: Thursday, October 25, 2018 7:02 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Glenn, Trey <Glenn.Trey@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: FW: proposed responses to FDEP's assumption questions
Importance: High

Matt & David – as mentioned on today's OGC call we've worked out responses to FDEP's latest questions. Trey asked me to forward this to you for your thoughts.

Matt Hicks' email below provides context.

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542

Ex. 6 Personal Privacy (PP) (cell)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

From: Hicks, Matt

Sent: Tuesday, October 23, 2018 5:51 PM

To: Palmer, Leif <Palmer.Leif@epa.gov>

Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>

Subject: FW: proposed responses to FDEP's assumption questions

Importance: High

Leif,

Here's EPA's proposed response to the two recent questions we received from DEP on Friday. These proposed responses were generated by the Region 4 team (Tom McGill level) after consulting with Simma (both issues) and Alexis (mitigation issue only) at OGC. DEP is waiting to hear from us before moving forward with their rulemaking so time is of the essence. More internal discussion is needed on

Ex. 5 AC/DP

state's

program but that issue is not as time critical as the two below.

Ex. 5 AC/DP

Ex. 5 AC/DP

Please call me if you'd like to discuss further.

Thanks,

Matt

From: McGill, Thomas

Sent: Tuesday, October 23, 2018 5:10 PM

To: Zapata, Cesar <Zapata.Cesar@epa.gov>

Cc: Calli, Rosemary <Calli.Rosemary@epa.gov>; Purify, Johnnie <Purify.Johnnie@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Allenbach, Becky <Allenbach.Beky@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>

Subject: proposed responses to FDEP's assumption questions

Importance: High

Cesar,

As a follow-up to our conversation yesterday, FDEP would appreciate EPA's quick feedback on questions they asked during calls held with some of EPA's assumption team members on Oct 19 and 22nd. You'll recall that I forwarded you an email from Matt Hicks on Oct 19 regarding their basic questions, and we received additional clarification with FDEP staff in a call held on Oct 22. We understand that FDEP is awaiting EPA's feedback prior to proceeding with their Notice of Proposed Rulemaking and that FDEP would prefer EPA's feedback through a conversation instead of in writing.

Attached is a document drafted by the EPA Assumption Team that includes: (1) FDEP's questions (highlighted in blue text); (2) proposed EPA responses (highlighted in yellow text); and (3) other information to provide background/context for FDEP's questions and/or the proposed responses. We would appreciate feedback from the RA and the senior leaders at OGC/OW as quickly as they can provide it before responding to FDEP.

If you have any questions or need any additional information please let us know.

Thanks.

Tom